



Federal Communications Commission  
Washington, D.C. 20554

June 16, 2009

DA 09-1342

Blake Twedt  
10224 Oasis Palm Drive  
Tampa, FL 33615

Re: Application for Renewal of License of Broadband Radio  
Service Station WMX233, File No. 20030203AAF

Dear Mr. Twedt:

On February 3, 2003, you filed the above-referenced late-filed application for renewal of license<sup>1</sup> of Broadband Radio Service (BRS)<sup>2</sup> license WMX233, along with a request for waiver<sup>3</sup> to allow consideration of the late-filed Renewal Application. The request is unopposed. For the reasons set forth below, we grant the Waiver Request.

The license for Station WMX233 expired on May 1, 2001.<sup>4</sup> The station has never been constructed.<sup>5</sup> Prior to March 25, 2002, the Multipoint Distribution Service (MDS), the predecessor-in-interest to BRS, was administered by the former Mass Media Bureau. That Bureau had a policy under which it would not accept renewal applications for MDS stations that were not constructed. On March 25, 2002, the Wireless Telecommunications Bureau (WTB) became responsible for administering MDS.<sup>6</sup> WTB began requiring unconstructed MDS stations to submit renewal applications. WTB did not issue a public notice announcing this change in policy. Instead, when licensees filed requests for extension of time to construct for licenses that had expired, WTB returned the applications and asked the licensees to file renewal applications with waiver requests.

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<sup>1</sup> File No. 20030203AAF (filed Feb. 3, 2003) (Renewal Application).

<sup>2</sup> On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O & FNPRM*). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service and ITFS the Educational Broadband Service. Because the new rules are in effect, we will refer to the services by their new names. Unless otherwise noted, the citations to rules will be to those rules in effect during the operative time.

<sup>3</sup> Request for Late-Acceptance, File No. 20030203AAF (filed Feb. 3, 2003) (Waiver Request).

<sup>4</sup> See licenses for Stations WMX233.

<sup>5</sup> Waiver Request.

<sup>6</sup> Radio Services Transferred from Mass Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, DA 02-638 (WTB Mar. 18, 2002).

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On October 17, 1996, you filed a timely request for extension of time to construct Station WMX233.<sup>7</sup> On February 3, 2003, you filed the Renewal Application.<sup>8</sup> On March 26, 2005, the Renewal Application was dismissed pursuant to Section 1.1910(b) of the Commission's Rules<sup>9</sup> for your failure to make a payment on a delinquent debt.<sup>10</sup> On May 24, 2005, the Extension Application was dismissed for the same reason.<sup>11</sup> On December 10, 2007, pursuant to a petition for reconsideration you filed, both applications were reinstated.

You argue that a waiver is justified because the former Mass Media Bureau would not have accepted a renewal application from an unconstructed station.<sup>12</sup> We agree. We may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>13</sup> We conclude that a waiver is justified under the second prong of the waiver standard. It would have been impossible for you to file before the renewal deadline because the former Mass Media Bureau would have returned the application. Furthermore, you acted with reasonable diligence in filing in 2003, particularly since the Bureau never formally announced that it was requiring renewal applications from unconstructed stations. We therefore find that denying a waiver would be inequitable and contrary to the public interest.

On March 18, 2008, the Commission adopted a declaratory ruling clarifying its policy concerning the division of overlapping geographic service areas (GSAs) between active EBS licensees and EBS licensees whose licenses expired prior to January 10, 2005 but are later reinstated.<sup>14</sup> The Commission stated:

- An active BRS or EBS licensee whose former protected service area overlapped with a co-channel license that was expired on January 10, 2005 need not split the football with such expired license if the licensee has not had its license reinstated.
- If a BRS or EBS license was expired on January 10, 2005, and such license is later reinstated *nunc pro tunc* pursuant to a waiver granted for a late-filed renewal application granted after the adoption date of this *Fourth Memorandum Opinion and Order*, that licensee's geographic service shall not include any portion of its former protected service area that overlapped with another licensee whose license was in active status on January 10, 2005 and on the date the expired licensee's late-filed

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<sup>7</sup> File No. 9750071 (filed Oct. 17, 1996) (Extension Application).

<sup>8</sup> Renewal Application.

<sup>9</sup> 47 C.F.R. § 1.1910(b)

<sup>10</sup> Notice of Dismissal, Ref. No. 3408908 (issued Mar. 28, 2005).

<sup>11</sup> Notice of Dismissal, Ref. No. 3601084 (issued Jul. 6, 2005).

<sup>12</sup> Waiver Request.

<sup>13</sup> 47 C.F.R. § 1.925(b)(3).

<sup>14</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6053-6060 ¶¶ 161-179 (2008) (*Declaratory Ruling*).

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renewal application was granted, unless a finding is made that splitting the football is appropriate because of manifest Commission error or other unique circumstances.<sup>15</sup>

In this case, our analysis shows that there are no active, co-channel non-BTA BRS licenses that overlap with the geographic service area of Station WMX233. Accordingly, we need not determine whether you should be allowed to “split-the-football.”

ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.925, 1.949(a), and 21.11(c) of the Commission’s Rules, 47 C.F.R. §§ 1.925, 1.949(a), 21.11(c), that the waiver request filed by Blake Twedt on February 3, 2003 IS GRANTED.

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.949 of the Commission’s Rules, 47 C.F.R. § 1.949, that the licensing staff of the Broadband Division SHALL PROCESS File Nos. 20030203AAF and 9750071 in accordance with this letter and the Commission’s rules and policies.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>15</sup> *Id.* at 6060 ¶ 179.